

SUPREME COURT OF QUEENSLAND

CITATION: *Attorney General for the State of Queensland v Sagiba* [2016] QSC 117

PARTIES: **ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND**
v
FRANK SAGIBA

FILE NO/S: BS No 10429 of 2009

DIVISION: Trial Division

PROCEEDING: Application

ORIGINATING COURT: Supreme Court at Brisbane

DELIVERED ON: 30 May 2016

DELIVERED AT: Brisbane

HEARING DATE: 30 May 2016

JUDGE: Peter Lyons J

ORDER: **The respondent be released from custody and continue to be subject to the supervision order made on 16 December 2009, as amended on 25 February 2013 and as further amended on 8 October 2013.**

CATCHWORDS: CRIMINAL LAW – SENTENCE – SENTENCING ORDERS – ORDERS AND DECLARATIONS RELATING TO SERIOUS OR VIOLENT OFFENDERS OR DANGEROUS SEXUAL OFFENDERS – DANGEROUS SEXUAL OFFENDER – GENERALLY – where supervision order contravened – whether adequate protection of the community can be ensured despite the contravention for the purposes of s 22(a) of the Dangerous Prisoners (Sexual Offenders) Act 2003.

COUNSEL: J Rolls for the Applicant
K Prskalo for the Respondent

SOLICITORS: Crown Law for the Applicant
Legal Aid Queensland for the Respondent

- [1] These proceedings arise under Division 5 of Part 2 of the *Dangerous Prisoners (Sexual Offenders) Act 2003 (Qld) (DPSOA)*, relating to an alleged contravention of a supervision order. Relevantly, they give rise to two issues, namely:
- (a) whether the respondent has contravened a requirement of the supervision order¹; and
 - (b) whether the adequate protection of the community can, despite the contravention, be ensured by the supervision order, with or without amendment².

The order

- [2] The supervision order was made on 16 December 2009, amended on 25 February 2013, and further amended on 8 October 2013. In its current form it includes a requirement **that the respondent “comply with a curfew direction or monitoring direction.”**³
- [3] A direction described as a curfew direction was given to the respondent, requiring him from 7 December 2015 to remain at his place of residence, unless he had the approval of the supervising correct services officer to depart.

Contravention

- [4] The facts relied upon by the applicant to establish the contravention are not in issue.
- [5] On 8 January 2016 the respondent was given permission to be absent from his residence to go to the Garbutt Shopping Centre. Shortly afterwards, the Electronic Monitoring Surveillance Unit detected that he had become separated from a global positioning device which he was required to wear. He was located about 12 minutes later, walking along Bayswater Road. He was wearing the electronic bracelet, but the global positioning device was not attached. His movements for a period of 35 minutes were accordingly unable to be accounted for.
- [6] The permission to attend the Garbutt shopping centre did not authorise the respondent to be at Bayswater Road.
- [7] It follows, and I so find, that on 8 January 2016, the respondent breached a requirement of his supervision order, in that he failed to comply with a curfew direction. I should add that the respondent does not contest this finding⁴.

Respondent’s background

- [8] The respondent is currently 36 years of age, his date of birth being 31 October 1979. He is of Torres Strait Islander heritage.
- [9] He was raised by adoptive parents, having been adopted when he was very young. In his teenage years he commenced to abuse alcohol and to take marijuana, at times being a heavy user of the latter drug.

¹ See s 22(1) of the DPSOA.

² See s 22(2) of the DPSOA.

³ General Term 5.

⁴ Respondent’s Outline of Submissions dated 23 May 2016 (*ROS*) para 2.

- [10] The respondent was convicted of offending from his late teenage years. In July 1999 he was convicted of a number of offences. The most serious of these involved entering premises, usually a dwelling, and either committing or intending to commit an indictable offence, on some occasions committing an indecent assault. For one of these offences he was sentenced to a term of imprisonment of four years, and for three other offences of entering premises, to terms of imprisonment of three years. Additional terms of imprisonment were imposed for a number of other offences.
- [11] The respondent was convicted of further serious offences in October 2003. The most serious was an offence of rape (digital penetration) for which he was sentenced to a term of imprisonment of seven years. For three charges of entering a dwelling and committing an indictable offence with circumstances of aggravation, he was sentenced to terms of imprisonment of six years; and for two counts of sexual assault he was sentenced to terms of imprisonment of three years. He was declared to be a serious violent offender. A supervision order was made towards the end of his period of imprisonment resulting from these sentences.
- [12] During his term of incarceration, the respondent underwent a sexual offender treatment programme, resulting in a positive exit report.
- [13] Some of the victims of the respondent's sexual offending were unknown to him; though at least one was distantly known. He was said to have spied upon them all prior to entering their houses, watching them undressing, through open windows⁵. The offending occurred in the context of very significant alcohol and marijuana intoxication⁶.
- [14] In addition to the contravention already referred to, the respondent has been found to have contravened his supervision order on five occasions. On each occasion, after the finding of the contravention, he was released subject to the supervision order, on some occasions amended.
- [15] Thus on 15 April 2010, a urinalysis test revealed the presence of cannabinoids, leading to a finding that he had breached a requirement of the supervision order that he abstain from using illicit drugs. On 18 May 2012, a urine sample revealed the presence of derivatives of a mixture known as "Kronic", contrary to a direction given on 3 February 2012. On 22 May 2013, the respondent was not carrying his GPS tracker, contrary to a monitoring direction with which he was required to comply by the supervision order. On 6 February 2014, it was found that he had ingested cannabis, contrary to a requirement of the supervision order. On 20 June 2014 a urine toxicology confirmation was received revealing 5F-PB-22 Corboxyindole in a sample of the respondent's urine. This was contrary to a direction requiring the respondent not to ingest any synthetic substance having a pharmacological effect similar to an illicit drug. On the occasion of each contravention, the respondent was returned to custody for substantial periods, usually of several months.
- [16] Notwithstanding that some of these contraventions involved the taking of some form of drug, since February 2015, regular breath tests and urine tests have all been negative⁷.

⁵ Report of Dr Grant dated 1 March 2016 (*Grant*) p 7.

⁶ Grant p 7.

⁷ Grant p 6.

- [17] At times the respondent has been in conflict with those responsible for his supervision under the order. Dr Grant attributed this to the respondent's personality disorder⁸. When interviewed by Dr Grant, he also agreed that he had been dishonest and evasive with his supervisors⁹.
- [18] Over the period of the supervision order, the respondent has generally had the benefit of professional support. He has received treatment from a psychiatrist, as well as a psychologist. He has been treated for depression. He was treated with Sertraline, which appears to have resulted in non-psychotic mood elevation with grandiose ideas (hypomania)¹⁰. This treatment then ceased, and he was subsequently treated with Seroquel. In addition, from about 2014, the respondent was taking Androcur for control of his libido, apparently voluntarily¹¹.
- [19] In the latter part of 2015, the respondent was offered independent accommodation in Townsville, which he accepted. It would appear that he did not find the family support there which he had expected. Nor was it possible to arrange for treatment by a psychiatrist. He initially found his dealings with his psychologist in Townsville, a woman, to be difficult, but after the initial sessions the difficulties did not continue¹².
- [20] In Townsville, the respondent decided to cease taking Androcur because of his concern about side-effects¹³. However, since his return to custody he has resumed taking this drug¹⁴.

Dr Grant's assessment

- [21] Dr Grant has diagnosed the respondent as having a personality disorder with prominent narcissistic and antisocial traits; a history of alcohol and cannabis abuse, with no definitive evidence of dependence, and currently in remission; a probable bipolar affective disorder type 2 with a past history of hypomania; a sexual paraphilia; and a history of severe cryptococcal meningitis, from which the respondent has recovered with no obvious ongoing consequences¹⁵.
- [22] Dr Grant relied on previous testing by use of risk assessment instruments. Thus the Static 2002R show the respondent to be in a moderate to high risk group for sexual reoffending. The HARE PCL-R 2nd Edition (Psychopathy Checklist) resulted in a score of 22 out of 40, not reaching the cut-off point for psychopathic personality disorder. Testing on the HCR-20 showed a high probability of future violence. The Risk For Sexual Violence Protocol indicated the respondent's risk of sexual reoffending as moderate, increasing to high if the respondent was intoxicated with alcohol and/or marijuana¹⁶.
- [23] Dr Grant noted the time since the last sexual offence the respondent had committed, and referred to some degree of maturation in the respondent's personality. He considered the

⁸ Grant p 20.

⁹ Grant p 13.

¹⁰ The report of Dr Harden dated 28 April 2016 (*Harden*) pp 15, 45.

¹¹ Grant p 20.

¹² Grant p 14.

¹³ Grant p 14.

¹⁴ Grant pp 14-15.

¹⁵ Grant p 19.

¹⁶ Grant pp 19-20.

chief factor that might have increased the risk to high levels would be “if he were to resume chronic and serious abuse of alcohol and/or cannabis”¹⁷.

- [24] Dr Grant considered the risk had been further reduced by the application of the supervision order, and by the anti-androgen medication. He thought that the supervision order had been effective in containing the risk of sexual offending, since the respondent was first made subject to it in 2009.
- [25] Dr Grant also considered that the respondent would need ongoing individual psychotherapy and appropriate management and education for emotional and personality issues, relationship problems, communication patterns, control of anger, and in particular the control of any paraphilic fantasies and urges. He encouraged continued use of Androcur¹⁸.

Dr Harden’s assessment

- [26] Dr Harden’s diagnoses of the respondent are substantially the same as those of Dr Grant¹⁹.
- [27] Dr Harden assessed the respondent by reference to risk assessment instruments. By reference to the STATIC 99, the risk of the respondent’s reoffending was high, relative to other adult male sex offenders. Testing against the Stable 2007 revealed the respondent to be in the high needs group. On the Sexual Offender Risk Appraisal Guide, the respondent had a very high score, revealing a significant risk of violent reoffending. On the HARE Psychopathy checklist, the score was 14, described by Dr Harden as “not elevated”. On the SVR 20, the respondent was considered to be a moderate to high risk of sexual violence²⁰. The result of these assessments and Dr Harden’s clinical assessment was that the respondent’s future risk of sexual offending was high, and his future risk of violent offending was also high²¹.
- [28] Dr Harden recommended close monitoring, continued attempts to address the respondent’s ongoing criminogenic needs, aggressive treatment of his alcohol and substance abuse, attention to support in the critical areas of vocation and relationships, and ongoing specialist mental health follow-up²².
- [29] Nevertheless, Dr Harden regarded it as a favourable fact that the respondent’s most recent contravention did not progress to substance misuse. His ultimate conclusion was that the monitoring and support associated with a supervision order would continue to reduce the risk that the respondent would commit a further sexual or violent offence to moderate²³.

Consideration

- [30] The respondent’s last serious offence was committed in about 2002. He has undergone a sexual offender’s treatment programme with some success, though the success does not appear to be complete²⁴. He has also undertaken extensive counselling and related

¹⁷ Grant p 20.

¹⁸ Grant pp 20-21.

¹⁹ Harden p 46.

²⁰ Harden pp 43-44.

²¹ Harden p 47.

²² Harden p 47.

²³ Harden p 47.

²⁴ Grant p 19.

professional treatment, again with some success. The fact that some of his contraventions involved the taking of drugs and related substances is a matter of some concern; but on the other hand, the current contravention is not of this kind. The fact that there has been some conflict with the supervisor is also a matter of some concern. It is to be hoped that continued counselling and further maturation will mean this is less significant.

- [31] The major areas of risk appear to be significant abuse of drugs or alcohol; and (possibly) relationship difficulties with a woman. The earlier drug-related contraventions do not appear to have approached this level of drug abuse; and in any event, the detection mechanisms appear to have been effective. Close monitoring of the respondent, and continued counselling, are likely to result in an appropriate reduction of the risk of the respondent's reoffending, associated with either area of concern.
- [32] I also note that the applicant accepts that the evidence is sufficient to establish that the adequate protection of the community can be ensured by the supervision order to which the respondent is subject. I so find.

Conclusion

- [33] The respondent has contravened a requirement of his supervision order, in that on 8 January 2016 he failed to comply with a curfew direction. Nevertheless, notwithstanding that contravention, I am satisfied that the adequate protection of the community can be ensured by the supervision order to which the respondent is subject. Accordingly, I propose to make an order to give effect to these reasons.